

Adam Q. Gould OSB #023155

Adamq@epquerto.org

Gould Law Firm, P.C.

243 W. Commercial Ave.

PO Box 29

Coos Bay, OR 97420

541-269-5566

Fax: 541-269-0670

Attorney for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

JOSEPH CATANIA,

Plaintiff,

v.

**KNIFE RIVER CORP., and
KNIFE RIVER CORP. - NORTHWEST**

Defendants.

Civil Action No: 6:13-cv-01764

**COMPLAINT FOR
PERSONAL INJURY
28 U.S.C. § 1332**

**Amount in Controversy
Exceeds \$75,000.00**

DEMAND FOR JURY TRIAL

Plaintiff alleges,

I. JURISDICTION AND VENUE

1. This court maintains jurisdiction of this case pursuant to 28 U.S.C. § 1332 for diversity of citizenship.

2. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

II. PARTIES

3. Plaintiff, Joseph Catania, is a resident of Modoc County, California.

4. Defendant Knife River Corp. is a Delaware Corporation engaged in the business of excavating and heavy construction, with principal place of business in Bismarck, North Dakota.

5. Defendant Knife River Corp. - Northwest is an Oregon Corporation, and a subsidiary of Defendant Knife River Corp., with principal place of business in Tangent, Oregon.

III. FACTUAL ALLEGATIONS

6. The United States Forest Service (USFS) administers a stretch of sand dunes along the Oregon Coast referred to as the Oregon Dunes National Recreational Area. This area is within Defendant USFS's Siuslaw National Forest. Within these dunes it manages several campgrounds. The dunes are popular among individuals who recreationally ride all-terrain vehicles (ATV's). Within the dunes there are an extensive network of ATV trails over which recreational riders operate their ATV's.

7. One of the campgrounds managed by the USFS is Horsfall Campground located near North Bend, Oregon. This campground specifically accommodates ATV riders. ATV trails leave directly from the campground to the dunes.

8. In October 2011, including on and before October 6, 2011, Defendants were working to repair rail lines that had recently been purchased by the Oregon

International Port of Coos Bay. A portion of the rail lines that Defendants were working on runs adjacent to the Oregon Dunes National Recreational Area, near Horsfall Campground. During this construction, Defendants excavated and altered a large section of a sand dune that included an ATV trail. As a result of this excavation, a specific trail was cut short and terminated by an abrupt drop-off. Defendants did not make any attempt to warn ATV riders of this alteration of the trail.

9. On October 6, 2011 Plaintiff, along with some family and friends, was staying at the Horsfall Campground. At around 10:00 pm, Plaintiff left the campground on his four-wheeler ATV for a ride into the dunes. Night riding was and is permitted in this area. Plaintiff was also familiar with the trails and the area. While traveling through the dunes he rode along the trail cut short by Defendants, described in paragraph 8, above. At the point where the trail suddenly dropped off without warning, Plaintiff fell forward and down approximately 30 feet and was injured.

10. As a result of his fall, Plaintiff fractured bones in his neck, shoulder, clavicle and shoulder blade. He underwent surgery to repair his shoulder, and had to wear a neck brace for 12 weeks. These injuries are permanent in nature. He also had a pre-existing injury to his right knee which was aggravated.

IV. CLAIMS FOR RELIEF

\ 11. Plaintiff realleges paragraphs 1-10.

12. Plaintiff's fall and subsequent injuries described above were caused by the

negligence of Defendants in one or more of the following particulars:

- a. Failure to warn Plaintiff that excavation work was being performed in the vicinity of the campground and dunes.
- b. Failure to warn Plaintiff that the ATV trail on which he was injured has been significantly altered.
- c. Excavating the sand dune in a way that altered an ATV trail and made it unreasonably dangerous for ATV travel.

13. As a result of his injuries caused by the negligence of Defendants, Plaintiff has suffered extreme pain and suffering and loss of use and enjoyment of life all to his non-economic damages in the amount of \$250,000.00.

14. As a result of his injuries caused by the negligence Defendants Plaintiff has incurred medical-related expenses all to his economic damages in the amount of \$176,108.07.

RESERVATION OF RIGHT TO AMEND COMPLAINT TO ADD DEFENDANT

15. On or about August 8, 2013, Plaintiff delivered to the USFS a Notice of Claim for Personal Injury pursuant to the Federal Tort Claims Act. The Claim seeks damages against USFS for in the same amount and for the same injuries as alleged in this Complaint against Defendants.

16. Defendants and USFS are independently and jointly and severally liable to

Plaintiff for damages.

17. This Court does not have jurisdiction over a the USFS in this matter until the agency denies Plaintiff's administrative Claim or until six months from the filing of Plaintiff's administrative claim, whichever occurs first.

18. Plaintiff reserves the right to amend this Complaint to add the USFS as a defendant.

V. RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. An award of economic damages in the amount of \$176,108.07.
2. An award of non-economic damages in an amount of \$250,000.00.
3. An award costs and disbursements incurred herein.
4. Any other relief the court deems proper.

Dated this 3rd day of October, 2013.

s/Adam Q. Gould
ADAM Q. GOULD
OSB #023155
(541) 269-5566
Attorney for Plaintiff